

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FRANK L. DILEONARDO, JR. as)	
trustee of the Frank L. DiLeonardo,)	
Jr. Trust, and TIMOTHY N. TATUM,)	
an individual,)	Case No. 07 C 6617
)	
Plaintiffs,)	Judge Charles R. Norgle
v.)	
)	Magistrate Judge Susan E. Cox
JOSEPH FLETCHER, an individual,)	
)	
Defendant.)	

MOTION TO ENFORCE SETTLEMENT AGREEMENT

FRANK L. DILEONARDO, JR., as trustee of the Frank L. DiLeonardo, Jr. Trust, and TIMOTHY N. TATUM (the "Plaintiffs") by and through their attorneys, Schuyler Roche, P.C., move this Court for the entry of a judgment in favor of the Plaintiffs and against the Defendant, JOSEPH FLETCHER ("Fletcher") pursuant to the Settlement Agreement entered into by the parties in this matter. In support of this motion, the Plaintiffs state as follows:

1. On January 15, 2008, the Plaintiffs and Fletcher entered in to a Settlement Agreement and Mutual Release (the "Settlement Agreement") in relation to the above captioned matter. A true and accurate copy of the Settlement Agreement is attached hereto as Exhibit A.
2. Pursuant to the Settlement Agreement inter alia, Fletcher was to make five payments to the Plaintiffs totaling two hundred and eighty six thousand dollars (\$286,000.00).

3. Despite the fact that Fletcher failed to make his first two installment payments, on March 10, 2008, the Plaintiffs agreed to modify the Settlement Agreement as follows: (a) Fletcher's immediate payment of seventy thousand dollars (\$70,000.00) and (b) the following modification of the payment schedule: forty thousand dollars (\$40,000.00) on April 15, 2008, fifty thousand dollars (\$50,000.00) on May 15, 2008, fifty thousand dollars (\$50,000.00) on June 15, 2008, and seventy six thousand dollars (\$76,000.00) on July 15, 2008. (As confirmed by counsel for Fletcher's e-mail correspondence on March 10, 2008, which is attached hereto as Exhibit B).

4. Fletcher failed to make payment on April 15, 2008; accordingly, he once again in breached the Settlement Agreement.

5. The Settlement Agreement provides at ¶ 5(a) that in the event of default the Plaintiffs must provide Fletcher with a written notice of default and Fletcher will have ten (10) business days from receipt of the notice of default to cure the default. The Plaintiffs sent Fletcher a notice of default via Federal Express next day delivery and via Certified U.S. Mail, Return Receipt Requested on April 16, 2008. Attached hereto as Exhibit C is a true and accurate copy of the Plaintiffs' notice of default sent to Fletcher on April 16, 2008, along with a copy of the United States Postal Service's return receipt signed by Fletcher.

6. Fletcher failed to cure the default within the prescribed ten (10) business days.

7. In conjunction with signing the Settlement Agreement, Fletcher signed an Affidavit for Consent to Judgment (the "Consent to Judgment"). Attached hereto as Exhibit D is a true and accurate copy of the Consent to Judgment.

8. The Settlement Agreement provides at ¶ 5(c) that in the event Fletcher has failed to make payment as prescribed, the notice of default has been sent and the time to cure the default has elapsed, the Plaintiffs shall have the right to file the Consent to Judgment in this Court and seek the entry of a judgment in the amount of three hundred thousand dollars (\$300,000.00) plus any additional pre-judgment interest accrued on that amount from the date of entry as well as costs and attorney's fees incurred in collecting the unpaid balance minus any payments made.

9. Accordingly, the Plaintiffs seek the entry of a judgment in the amount of two hundred thirty thousand dollars (\$230,000.00), plus pre-judgment interest accrued on that amount from the date of entry as well as costs and attorney's fees incurred in collecting the unpaid balance.

WHEREFORE, the Plaintiffs, FRANK L. DILEONARDO, JR., as trustee of the Frank L. DiLeonardo, Jr. Trust, and TIMOTHY N. TATUM, pray for entry of a judgment order:

1. Entitling the Plaintiffs to recover from the Defendant, JOSEPH FLETCHER, in the amount of two hundred thirty thousand dollars (\$230,000.00) plus pre-judgment interest accrued on that amount from the date of entry as well as costs and attorney's fees incurred in collecting the unpaid balance;
2. Granting the Plaintiffs leave to submit a petition for attorneys' fees within twenty one (21) days of the entry of a judgment order; and
3. For such other relief as this Court deems just and proper.

FRANK L. DILEONARDO, as trustee of the Frank
L. DiLeonardo Jr. Trust and TIMOTHY N.
TATUM,

By: /s/ James J. McNamara

One of the attorneys for the Plaintiffs

James J. McNamara, Esq. (ARDC #6286853)

Schuyler Roche, P.C.

One Prudential Plaza, Suite 3800

130 East Randolph Street

Chicago, Illinois 60601

Tel: (312) 565-2400

Fax: (312) 565-8300

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